

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 291 OF 2001.

Bhagwan Anand Kamble

.....

.....

Appellant
(Orig.Accd.)

V/s

The State of Maharashtra

.....Respondent.

Mr. Abhaykumar Apte for the appellant.

Mrs. U. V. Kejriwal, APP for the State.

CORAM: V.G. PALSHIKAR

AND

SMT.NISHITA MHATRE, JJ.

11th April, 2005.

Oral Judgment: (Per Palshikar, J)

1. Being aggrieved by the order of conviction and sentence passed by the t & Sessions Judge, Solapur in Sessions Case No.167 of 2000 on 16.3.2001 the appellant-accused have preferred this appeal on the grounds mentioned in the memo of appeal and also verbally canvassed before us.

2. With the assistance of the learned counsel for the appellant and the learned Additional Public Prosecutor we have perused the record and reappreciated the entire

evidence.

3. The prosecution story as it emerges from our reappreciation of evidence stated briefly is that the deceased Laxmi was residing with the appellant and brother in law. Sister of the appellant Asha was residing with her husband Bhajandas at some distance from the house of the appellant. Appellate was carrying on business of boot polish at S.T. Stand, Barshi where his father and brother were working in a shop. It is alleged that Laxmi was insisting the appellant to leave her at her parents house which was at some distance and on account of which quarrel took place 2/3 days prior to the date of incident i.e. 11.6.2000. It is alleged that on 11.6.2000 the appellant beat Laxmi, poured kerosene on her body and set her on fire. Sister of the appellant and her husband who were staying at some distance extinguished the fire and took Laxmi to the Jawahar hospital at Barshi where case papers were prepared and police was informed and requested to make arrangements for recording the dying declaration. ASI Inamdar visited the hospital and recorded the statement of Laxmi in which she disclosed that her husband poured kerosene on her and set her on fire. On the basis of the said statement CR No.57/200 under sections 307, 323, 504 of Indian Penal Code came to be registered against the appellant and upon investigation appellant came to be arrested on 12.6.2000. During this investigation a chit written by Laxmi to her lover was seized. Thereafter on 17.6.2000 Laxmi was discharged from Jawahar Hospital and admitted in General Hospital at Osmanabad where ultimately on 22.6.2000 she succumbed to burn injuries and charge sheet against the appellant and other accused came to be filed in the Court of Judicial Magistrate, First Class, Barshi who committed the case to the

Sessions Court at Solapur. The learned trial Judge after appreciating the evidence on record came to the conclusion of guilt, convicted the accused and sentence him to suffer life imprisonment for the offence punishable under section 302 of Indian Penal Code. It is this order of conviction and sentence which is challenged in this appeal by the appellant.

4. The prosecution has examined six witnesses to prove its case that the appellant-accused was responsible for the homicidal death of his wife Laxmi. P.W. 1 – Vasant Gurav is the Special Executive Magistrate who recorded the dying declaration Ex.19 made by the victim. He has proved all the essentials which will be performed while recording dying declaration. He has stated that he has followed all the requirements. Declaration bears the necessary certificate of the doctor and have been duly proved by the witness. P.W. 2 – Prashant Sadehalli is the doctor who conducted the post mortem and has proved that the death of the victim was caused due to burn injuries and was therefore homicidal. P.W. 3 – Bharat Gaikwad is the doctor who admitted the victim to the hospital and noted the case history as told by the victim who stated before the doctor that she was burnt by her husband. This immediate disclosure of the victim is recorded on the history sheet of the victim where it is categorically observed by the doctor that history of homicidal burns by husband and sister-in-law of the victim pouring kerosene on the body of the victim. This is immediately on admission around 1.00 p.m. On 11.6.2001. P.W. 4 – Yamunabai Pokade is the mother of the victim who however has turned hostile. P.W. 5 – Saheb Inamdar is the Assistant Sub Inspector of police who recorded the statement Exh.29 made by the victim immediately after she was admitted to the hospital. A careful comparison of Exhs.29 and 19

discloses that both the documents corroborate each other on all material particulars. Exh.19 which is a dying declaration recorded by Special Executive Magistrate is duly certified by the doctor who categorically stated in the certificate that the victim from the beginning to end of recording of dying declaration was in a conscious state of awareness of mind and had factually voluntarily given the dying declaration. In the face of all this evidence which has been rightly appreciated by the learned trial Judge it cannot be said that there is any error either of fact or of law committed by the learned trial Judge in coming to the conclusion of guilt of the accused. Findings are based on substantial evidence which cannot be rejected. Findings are arrived at on proper appreciation of evidence on the basis established by appreciation of evidence. In such circumstances, in our opinion, there is no substance in the appeal. Hence the appeal fails and is dismissed.